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PROVISIONAL SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

Held at the Parque Central, Caracas,
on Tuesday, 6 August 1974, at 10.45 a.m.

Chairman:	Mr. PISK	Czechoslovakia
later:	Mr. AGUILAR	Venezuela
Rapporteur:	Mr. NANDAN	Fiji

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EXCLUSIVE ECONOMIC ZONE BEYOND THE TERRITORIAL SEA (continued)

Mr. OGISO (Japan) said that it was his delegation's understanding that items 6 and 7 represented alternative rather than complementary approaches. Those items were of central importance to the Conference and to the world community as a whole, since they involved the question of how best to conserve and distribute the wealth of the oceans among the nations of the world.

His delegation interpreted proposals for an exclusive economic zone as involving a zone in the high seas in which the coastal State had exclusive rights over all resources, living and non-living. The crucial issue for his delegation was the proposed rights of coastal States over living resources in the adjacent waters.

For Japan, the sea areas beyond the territorial sea should retain basically the character of high seas. It had been argued that freedom of fishing in the high seas could be abused, but it was surely not appropriate to abolish a freedom because of the risk of abuse.

Although it was true that in certain limited cases freedom of access to fishery resources might have led to over-exploitation and depletion, it was an exaggeration to contend that the danger of depletion of world fishery resources was imminent or omnipresent. The truth of the matter, as the FAO representative had pointed out, was that despite the popular belief to the contrary, the number of stocks that were actually depleted, in the sense that their productivity had been significantly reduced, was still small. The world catch could thus still be increased substantially before the level of full utilization was reached.

If conservation was required with regard to certain species, his country was fully prepared to co-operate in bringing it about. In that regard, the new Convention should contain a general obligation for all States to adopt conservation measures, and should lay down certain basic principles relating to such measures, including the need to base them on the best scientific evidence available, the requirement of consultation with appropriate international or regional organizations and the principle of non-discrimination among fishermen. Moreover, the special status of the coastal State with regard to conservation should be recognized. Thus, the coastal State should have the right to participate, on an equal basis, in any survey of fishing resources, whether or not nationals of that State were actually engaged in fishing, and other States conducting a survey should make available to the coastal State all their findings in the coastal State's adjacent waters.

(Mr. Ogiso, Japan)

In order effectively to ensure sound conservation of fishery resources, efforts at the national level had to be closely linked with international co-operation. International and regional organizations had played an important role in that regard, and should continue to be able to do so. His delegation therefore would favour any proposal that would strengthen co-operation with such organizations.

With regard to the more critical problem of distribution or allocation of fishery resources, all delegations would have to be guided by considerations of equity and justice. His delegation's detailed proposal for a fisheries régime on the high seas, submitted in the Sea-Bed Committee, was an attempt to provide for a broad and equitable accommodation of the interests of all States, taking into account the dependence on fishing of the coastal State and of other States.

Freedom of access to fishery resources, if it was retained only beyond 200 miles, would become practically meaningless. Except for highly migratory ocean species, fish lived close to the shore, mostly within areas that would be covered by a 200-mile zone, and they were also unevenly distributed, tending to live in great abundance off the coasts of a rather limited number of countries. If the proposed 200-mile economic zone was adopted, the major fertile fishing grounds of the world would come under the exclusive jurisdiction of several coastal States, including some highly developed countries. That fact showed, as other representatives had observed, that acceptance of the exclusive economic zone as presently conceived would accentuate rather than reduce existing inequities.

His delegation was very much aware of the aspirations of developing countries for economic advancement through development of their fishing industry, and of the special concerns of countries whose economy was overwhelmingly dependent on fisheries. If proposals for the economic zone, or other similar proposals, were intended to satisfy the concerns of those countries, his delegation would understand their merits and could go a long way toward accommodating the interests of those countries. Special treatment, based on equity and justice, also had to be given to land-locked and otherwise geographically disadvantaged States in order to offset their disadvantaged position.

Last, but not least, respect had to be given to the rights of States which had traditionally engaged in fishing, and in whose economy fishing and related industries naturally played an important part. Fishing had long been a necessity for the survival of the Japanese people because of the limited agricultural and livestock-raising

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(Mr. Ogiso, Japan)

potential of Japanese territory, and the Japanese population had also depended on fish and fish products for the major part of their protein supply. Fishing would therefore continue to be vital to his country regardless of the over-all development of its national economy. The solution reached at the Conference, if it was to be viable and generally acceptable, must provide for protection and due respect for traditional fishing rights. It should also take into account the conclusions reached by the International Court of Justice in the Fisheries Jurisdiction Case, which had held that both a coastal State and a non-coastal State had rights in the fishing resources of the north-east Atlantic because of the special dependence of their peoples on fishing. His delegation's major difficulty with the various proposals for an exclusive economic zone was the failure to take into account the need for adequate protection of the rights of other States, including traditional fishing States.

Document A/CONF.62/C.2/L.21 submitted by Nigeria was an improvement on other proposals in that it at least attempted to set out more clearly the rights and obligations of both the coastal State and other States in the economic zone. Article 2, paragraph 2, of that document, although it could be improved, at least was a starting point for the right approach.

As one of the several countries in the world which had rivers that spawned salmon, Japan fully shared the view of some countries which had emphasized the special concerns of the State of origin of anadromous species. But it would be asking too much for those States to claim proprietary rights over all anadromous species throughout their migration, when those species spent more than three quarters of their life cycle in the middle of the ocean, thousands of miles away from where they had spawned. That problem should be resolved through consultations among the limited number of countries which it directly affected.

Mr. Aguilar (Venezuela) took the Chair.

Mr. RIPHAGEN (Netherlands), introducing document A/CONF.62/C.2/L.14, summarized the philosophy behind that proposal in two essential ideas: first, the idea that notwithstanding the great variety of geographical situations involved, there were some objective parameters for determining marine boundaries between opposite and adjacent States; and secondly, that there was a need for compulsory procedures to be followed in all cases where the claims of States in respect of marine boundaries clashed.

(Mr. Riphagen, Netherlands)

The objective parameters undoubtedly included the median line or equidistance principle, which could be applied automatically and often, although not always, resulted in obviously equitable solutions.

There were, however, more complicated situations in which other objective parameters would have to be used to correct the application of the equidistance principle if an equitable solution was to be found. However, in view of the great diversity of situations, it was hardly possible to enumerate such parameters and their interrelationship within a convention article. Accordingly, paragraph 1 of his delegation's proposal was generally phrased, referring to the application of "equitable principles, taking into account all relevant circumstances".

With respect to the need for compulsory procedures, there was a duty on the part of States whose claims clashed to negotiate in good faith in order to arrive at an agreement determining the precise boundaries between their respective zones, and to refrain from unilateral action in that respect. The fulfillment of that double duty on both sides might require some outside help pending final settlement. It was for that reason that paragraphs 2 and 3 of the proposal should be taken together. Whereas paragraph 2 restrained unilateral action on either side by an automatically applicable rule, from which of course the States might immediately deviate by common agreement, paragraph 3 opened the possibility for each party to invoke the help of an impartial conciliatory body which might at any time draw the attention of the parties to any measures which might facilitate amicable settlement.

Obviously the Conciliation Commission could, if circumstances so warranted, draw the attention of the parties to any interim solution which might facilitate the conclusion of a final agreement on delimitation. It was to be expected that the procedure of conciliation would normally lead to a final agreement. However, in the case of an irreducible difference of opinion between the States concerned on the relevance of certain factual circumstances or on the relative weight of the various parameters, there would be no other peaceful way but judicial settlement. Paragraph 4 of the proposal accordingly referred to the general article on the compulsory settlement of disputes without which, in his delegation's view, no new law of the sea convention could be generally acceptable.

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(Mr. Riphagen, Netherlands)

The draft article also contained the term "economic zone". In order to avoid any misunderstanding, he wished to make it clear that, in his delegation's view, the economic zone was one in which the coastal State might exercise certain functionally determined rights, subject to the fulfilment of certain duties towards the international community as a whole and towards other States. If the concept of an economic zone were understood in that sense, it would be acceptable to his delegation. In view of the diversity of the different parts of the Kingdom of the Netherlands, only a treaty acceptable to all groups of States, providing for the necessary compromises, would be acceptable to the Kingdom as a whole.

Mr. ROBINSON (Jamaica) said that the concept of an exclusive economic zone or patrimonial sea, the single most dynamic and important development in the law of the sea since the early 1940s, had been advanced by some developing countries with the laudable aim of offsetting the economic imbalance created by history in favour of a few powerful countries.

As a developing country, Jamaica welcomed the concept of the exclusive economic zone and the patrimonial sea in principle. However, although those concepts could be a force for the economic good of some countries, they could also be a force for the economic doom of others, for not all countries had a sufficiently wide expanse of waters fronting their coasts and a sufficient wealth of resources in those waters to warrant the claim of a 200-mile jurisdiction. Indeed, it was nature's defiance of a country's ideological views which made the problems of the law of the sea so intractable. The challenge to the Conference, then, was to devise a strategy to create a legal order which did not necessarily reflect the accidents of geography. There was an ironic possibility that a concept fathered by developing countries for the benefit of developing countries could be made to operate to the detriment of other developing countries because of the accidents of nature. Hence, in his delegation's view, the concept of the economic zone must, while retaining its essential characteristics, be made more flexible and adaptable to the needs of developing geographically disadvantaged countries. His delegation's acceptance of an economic zone or patrimonial sea was conditional on the granting to developing geographically disadvantaged States of a right of access to exploit the living resources of the neighbouring zones. That requirement was justified not only

(Mr. Robinson, Jamaica)

because of the imperative of social justice, but also on the basis of what his delegation conceived to be current law. In that connexion, he agreed with the representative of Trinidad and Tobago that even when the Conference endorsed the concept of an exclusive economic zone, it would not be codifying but progressively developing international law. He also supported the views of the delegation of Barbados with regard to the right of access for geographically disadvantaged States.

His delegation was heartened by the emergence of a general trend towards the granting of rights of access to land-locked and other geographically disadvantaged States, expressed not only by "beneficiary" States but also by "grantor" States. Examples of the attitude of the "grantor" States were to be found in paragraph 9 of the Declaration of the Organization of African Unity on the Issues of the Law of the Sea (A/CONF.62/33); in article VIII of the proposal by various African countries issued as document A/AC.138/SC.II/L.40 (volume III, p. 87 of the report of the Sea-Bed Committee); and articles 5 and 6 of document A/AC.138/SC.II/L.38 proposed by Canada, India, Kenya and Sri Lanka (volume III, p. 83 of the report of the Sea-Bed Committee).

Several Latin American countries had supported the granting of access to their adjacent waters by geographically disadvantaged States, but a distinction should be drawn between the patrimonialists and the strict territorialists claiming a territorial sea up to 200 miles. His own delegation had submitted draft articles on the rights of developing geographically disadvantaged States in a territorial sea beyond 12 miles (A/CONF.62/C.2/L.36).

Although he recognized the difference between the two approaches, he would also deal with proposals from the territorialists since his delegation's primary concern was with rights of geographically disadvantaged States within maritime zones beyond 12 miles, whether economic zones, patrimonial sea or territorial sea of 200 miles.

Section VII of the Uruguayan draft in A/AC.138/SC.II/L.23 (volume III, p. 28 of the report of the Sea-Bed Committee), spoke of preferential treatment for States having no sea-coast with regard to fishing rights in the territorial sea. The rights of geographically disadvantaged States had received the fullest treatment in article 13 of A/AC.138/SC.II/L.42, submitted by Ecuador, Panama and Peru (volume III, p. 32 of the report of the Sea-Bed Committee), which provided for preferential régimes for such States

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(Mr. Robinson, Jamaica)

with regard to exploitation of renewable resources in the waters of a region. The Argentinian draft articles (A/AC.138/SC.II/L.37, reproduced in volume III, p. 78 of the report of the Sea-Bed Committee) provided in paragraph 8 for a preferential régime for geographically disadvantaged States in a region or subregion with regard to fishing in the exclusive maritime areas of other States of the same region. At the present Conference, document A/CONF.62/L.4, submitted by nine countries from different geographical regions, had expressly recognized the need for rights of access for developing land-locked and other geographically disadvantaged States to the living resources of the exclusive economic zone of the neighbouring coastal States.

His delegation had been further encouraged by the statement of the President of Mexico that his country was prepared to work out arrangements with Caribbean countries for which an economic zone would not be of significant value with regard to fishing in the area. In that connexion, it was disappointed with the Nigerian draft articles (A/CONF.62/C.2/L.21), which did not deal with rights of access for developing geographically disadvantaged States, but was gratified that a revision had been promised to deal with that matter.

Proposals from beneficiary States were contained in document A/AC.138/SC.II/L.39, submitted by Afghanistan, Austria, Belgium, Bolivia, Nepal and Singapore (volume III, p. 85, of the report of the Sea-Bed Committee); the proposal by Uganda and Zambia in document A/AC.138/SC.II/L.41 (volume III, p. 89, of the report of the Sea-Bed Committee); the proposal by Zaire in document A/AC.138/SC.II/L.60 (volume III, p. 114, of the report of the Sea-Bed Committee); and that of his own country in document A/AC.138/SC.II/L.55 (volume III, p. 110, of the report of the Sea-Bed Committee).

A broad trend in favour of the rights of geographically disadvantaged States in the economic zone had thus emerged, which he hoped would be reflected in the informal working paper to be prepared by the officers of the Committee. The problem remaining was how to reflect that trend in the Convention itself. His delegation believed that although regional arrangements would have a useful role to play, the right itself must be secured in the general multilateral convention, and that between the right of a State to establish an economic zone and the rights of geographically disadvantaged States within that zone must be parallel. Moreover, those rights must be so enshrined in the Convention as to form an essential characteristic of the economic zone.

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(Mr. Robinson, Jamaica)

The articles put forward by his delegation in document A/CONF.62/C.2/L.35 reflected those views. They were entitled "Rights of developing geographically disadvantaged States within the economic zone or patrimonial sea". Article 5 defined geographically disadvantaged States to mean developing States which were land-locked or for geographical, biological or ecological reasons derived no substantial economic advantage from establishing an economic zone or patrimonial sea; or States which were adversely affected in their economies by the establishment of economic zones or patrimonial seas by other States; or States which had short coastlines and could not extend uniformly their national jurisdiction. That definition differed from the one submitted by his delegation the previous year in that land-locked countries were given official treatment. His delegation would, however, welcome suggestions for improving its text. Ultimately what was a geographically disadvantaged State would be a matter of choice rather than proof; nevertheless, he believed that his delegation's definition identified the essential features of such a State.

Mr. DIALLO (Guinea) said that the constitution of his country contained a provision renouncing part or all of its sovereignty in favour of African unity. The need for security must be reconciled with that of development, and the international community had an obligation to find solutions taking into account the hopes placed in it by the peoples of the world.

Unfortunately not all countries applied the principles adopted by Guinea. The seas and oceans whose traditional role was to promote trade among nations had become sources of tension. His country had hoped that the international community would try to bring about a new economic era. However, selfish national interests had prevailed, and certain great Powers were trying to take steps to safeguard their future. The concept of the economic zone was in fact an opium for the developing world, proffered in an attempt to make it forget the real needs of its development. The exclusive economic zone had today been voided of its content. His delegation would therefore always defend the right to a territorial sea of 200 nautical miles with all the rights attached thereto.

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Mr. YANKOV (Bulgaria) said that the shape of the economic zone would have a decisive impact on the law of the sea, for the establishment of economic zones comprising the main part of the oceans with accessible natural resources would affect the peaceful uses of the sea. The premises of the economic zone concept must be thoroughly examined, especially since there were many interpretations of the rights and duties of the coastal State in the zone.

Taking into consideration the interests of the many developing countries which supported the economic zone, his Government had already expressed its readiness to co-operate in the preparation of generally acceptable principles and rules of international law relating to the zone, as a part of a package including a 12-mile territorial sea, free transit through straits used for international navigation, and the régime of the sea-bed beyond the limits of national jurisdiction.

In some interpretations the economic zone had acquired a very broad, if not unlimited, scope. The idea had been introduced in 1971 in the form of an economic zone in which States could issue fishing licences in return for technical and other forms of assistance. It had then developed into a 200-mile zone of exclusive jurisdiction over all living and mineral resources of the sea and the sea-bed. The view had been expressed at the Committee's 3rd meeting that the logical conclusion of the concept of an exclusive economic zone was the identification of the economic zone with the territorial sea; it had also been argued that economic development required a national maritime zone that was as vast as possible and that the Conference should give up the idea of differentiating between the territorial sea and the economic zone. At the 21st meeting the view had been expressed that the economic zone had found simple, logical and coherent expression in the adoption of a territorial sea of 200 miles. Draft articles had already been submitted which more or less explicitly broadened the scope of exclusive rights over the living and mineral resources to the extent of full sovereignty, thus eliminating any practical difference between the economic zone and the territorial sea.

The problem of the supply of energy and raw materials was the great challenge of modern times, and thus the distribution of energy and raw material resources would be a decisive factor in world stability. The main beneficiaries of the establishment of large national seas would be not more than 30 countries with long coastlines: about one third of them were developed States, some of which had huge natural resources

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(Mr. Yankov, Bulgaria)

on land, a significant number of the developing States in the same category had considerable mineral resources on land. Clearly, excessive national appropriations of large areas of the sea might lead to serious friction if a narrow nationalistic approach prevailed in the shaping of the world order over the oceans. It would be unfortunate if their geographical situation and the state of their economy were to give some States a privileged position in the uses of the sea and the exploitation of its natural resources. The order for the world oceans should therefore be based on the principles of equity and on a balance between the rights of the coastal States and the interests of the international community. His delegation appreciated the aspirations of many developing countries to economic independence and well-being, but it was necessary to prevent excessive national claims detrimental to the management of the marine environment and the other peaceful uses of the sea. The economic zone should serve the economic needs of coastal States and should not be made a device for the extension of their territorial sovereignty. That constructive approach was reflected in the draft articles submitted by the socialist countries (A/CONF.62/C.2/L.38).

Reviewing the main provisions of the draft articles, he noted that the sponsors had attempted to meet the legitimate demands of the developing countries. The draft articles had not been submitted for bargaining purposes but to provide a basis for meaningful negotiations. The sponsors hoped that the articles would be appreciated as an effort to provide for a comprehensive agreement on the overall package on the law of the sea.

Mr. FEDO (Denmark) said that in introducing his country's draft article on anadromous species (A/CONF.62/C.2/L.37) he would like to comment in greater detail on the subject.

His delegation had already stated that fishing for anadromous species should not be regulated by a global convention and that it did not agree that such fishing, especially in the case of salmon, should be reserved for and regulated only by the countries in which the species had hatched and spent their early life.

The anadromous fish were certainly a unique aquatic resource; during early life it was fully dependent on a fresh water environment, while later it required the salt water of the open sea. The migration of salmon made it unacceptable that only one country, the spawning State, should claim ownership of salmon stocks. During migration the salmon left the waters of the spawning State and spent much of its life in the high

(Mr. Fergo, Denmark)

seas and near the coasts of other countries, during which time it gained more than 95 per cent of its weight, depending fully on the sea resources of those areas. The salmon lived on other living resources of the sea, competing to some degree with local fishermen. Thus the management and conservation of the salmon was not a problem only of the spawning State.

Salmon fishing was often of overwhelming importance to fishermen in certain regions; it was vital both to the population of Greenland and to Danish fishermen. It was the fisherman's means of livelihood and provided the material for many shore enterprises. Clearly, therefore, his country was concerned to have a rational and equitable regulation of salmon stocks.

The salmon was able to gain most of its weight during migration in the sea only because other States, to the same degree as the spawning State, avoided pollution of their waters. Such States had an equal interest and responsibility as the spawning States in preventing contamination of the sea.

During the time it spent in the coastal waters of Greenland the salmon gained one quarter of its final total weight during a period of only three or four months. Thus, it would seem unreasonable to local fishermen if they were not allowed to catch at least part of the fish which they naturally regarded as their own. Moreover, scientists estimated the natural mortality of the salmon while moving, for example, between West Greenland and home waters to be in the 15-40 per cent range; thus, many of the salmon caught by other States would in any case never have returned to their spawning river.

The spawning States argued that it was unjust that only they should pay for the conservation measures needed to maintain the salmon stocks of their rivers. In his delegation's view, if a country of origin contaminated or changed the natural environment it should bear the expense of remedying the ill effects, and such expense should form no basis for compensatory claims involving ownership of the stock "thereby produced". If, however, expenditure and efforts went beyond the remedying of previous damage, they might be taken into consideration in compensatory claims.

Conservation measures including restrictions on catch might sometimes be biologically necessary and in the interests of all States concerned, but specific rules ought not to form part of a global convention. An article could be included in the Convention to ensure that rules were worked out bilaterally and/or in regional organizations.

Mr. [illegible] (Venezuela) said that acceptance of the exclusive economic zone, which was called the patrimonial sea in the Santo Domingo Declaration and in the joint proposal of Colombia, Mexico and Venezuela (A/CONF.62/C.2/L.[illegible]), was the corner-stone of the political agreement sought by the Conference. He noted that his country had been the first to put forward the idea of the patrimonial sea in the Sea-Bed Committee.

Clearly, a majority of States were agreed on the establishment of an economic zone, although there were differences as to the nature and extent of the rights to be enjoyed therein by coastal States. The economic zone was quite distinct from the territorial sea: in the territorial sea a State had sovereignty and all other jurisdictions, subject only to the right of innocent passage; in the patrimonial sea, it would have only certain jurisdictions specified in the Convention.

The legal régime of the patrimonial sea had two basic aspects: firstly, the granting to the coastal State of sovereign rights over the renewable and non-renewable resources found in the waters, the sea-bed and the subsoil of the zone, together with other jurisdictions, notably with regard to the preservation of the marine environment and to scientific research; secondly, the protection of the freedoms of navigation, overflight and the laying of cables and pipelines. Thus the aspirations of many countries to use the resources of their adjacent waters to feed their peoples and speed their progress were harmonized with the general concern not to impede communications unnecessarily. It was necessary to define the rights and duties of coastal States and those of other States exercising the freedoms he had mentioned. Thus, his delegation conceived the economic zone as a transitional zone between the territorial sea and the high seas or international zone.

His delegation thought the structure of the Nigerian draft articles (A/CONF.62/C.2/L.21) appropriate, but two points gave rise to difficulties. Firstly, article 1, subparagraph 2 (d), accorded the coastal State exclusive jurisdiction similar to that established in existing international law for the contiguous zone; the Committee would have to consider whether it was appropriate to extend that régime to the whole of the economic zone. Secondly, his delegation shared the view that article 2, paragraph 2, was drafted in too broad terms. Clearly, any State could participate

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(Mr. Reyes, Venezuela)

in the exploitation of an agreed level of the living resources of the zone, subject to special agreements, but there was no need to state that in the Convention. Moreover, as drafted, the provision was ambiguous.

In general, his delegation could accept the provisions on the economic zone set forth in the nine-Power draft articles (A/CONF.62/L.4); article 10 (a) seemed particularly appropriate.

With regard to the question of delimitation between opposite or adjacent States, the draft articles submitted by Kenya and Tunisia (A/CONF.62/C.2/L.28) seemed a good basis for discussion.

His delegation wished to repeat that it was prepared to consider, in a regional or subregional framework, the aspirations expressed in the Jamaican proposal (A/CONF.62/C.2/L.35). However, it had reservations about the use of the term "geographically disadvantaged States"; its favourable attitude towards the proposal was subject to the inclusion, specifically in article 5, of criteria for determining which States might receive special treatment.

Mr. KOLOSOVSKY (Union of Soviet Socialist Republics), commenting on the draft articles submitted by the socialist countries (A/CONF.62/C.2/L.38), noted that the Soviet delegation had repeatedly stated in the Sea-Bed Committee that the establishment of economic zones would have undesirable consequences for many countries, especially the geographically disadvantaged States and those having no outlet to the sea. Substantial harm would also be sustained by the Soviet Union and a number of other countries whose fishing industries depended on distant-water fishing on the high seas. However, his country was ready to proceed towards the establishment of such zones, having in mind the desire of many coastal developing countries to raise their standard of living and to strengthen their national economies. The interests of all other States and peoples would have to be taken into account in the establishment of economic zones, since they too had an interest in the rational utilization of marine resources. In formulating its position his country was guided by the fact that it was important for the strengthening of peace that the Conference should reach mutually acceptable decisions on questions affecting the vital interests of many countries. His delegation wished to stress that its readiness to recognize the right of a coastal State to establish an economic zone of up to 200 miles and its right to control the living and mineral resources of the zone

(Mr. Kolosovsky, USSR)

was conditional on the simultaneous adoption of mutually acceptable decisions on the other basic questions of the law of the sea listed in the introduction to the draft articles.

The draft articles included a provision granting the coastal State sovereign rights for the purposes of exploration and exploitation of the living and mineral resources of the zone, including the right to determine the maximum allowable catch of fish and other living resources and to establish measures to regulate the exploitation of such resources. The aim was to give the coastal State not only guarantees of a durable raw materials base but also an opportunity to develop its fishing industry in a planned manner. Observance of the recommendations of international fishery organizations would prevent or minimize any differences over questions relating to the living resources of the economic zone between the coastal State and neighbouring or other interested States. It would enable the coastal State to arrange mutually advantageous co-operation with the other countries and to reduce its own expenditures on the scientific research without which the rational operation of the fishing industry was inconceivable.

Since mankind was vitally concerned to utilize fish resources to the full, without of course jeopardizing their reproduction, it was unthinkable that those resources should not be utilized to the permissible extent or, what was worse, should simply be lost. Accordingly, the Convention must include a provision requiring a coastal State which could not itself take 100 per cent of the allowable catch to authorize foreign fishermen to take the remainder. The developing coastal States should receive reasonable payment, either in cash or in other forms, for granting such authorization. It would be just to include in the Convention a provision granting nationals of developing countries having no outlet to the sea, or only a narrow one, the right to fish in the economic zone of a neighbouring coastal State on an equal footing.

His delegation wished to point out that the granting of sovereign rights in the economic zone to the coastal State was not equivalent to the granting of territorial sovereignty and must in no way interfere with the other lawful activities of States on the high seas, especially with international maritime communications. The Convention must state clearly that the rights of the coastal State in the economic zone must be exercised without prejudice to the rights of any other State recognized in international

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(Mr. Kolosovsky, USSR)

law, including the freedoms of navigation, overflight and the laying of cables and pipelines, and the freedom of scientific research not connected with the exploration and exploitation of the living and mineral resources of the economic zone.

The sponsors of the draft articles had not made excessive demands; they had taken into account the legitimate wishes of other States. They considered that the draft articles were reasonable and balanced and might form the basis of a mutually acceptable settlement of the question of fishing in the economic zone and of all the other important questions of the law of the sea. They hoped that the other participants in the Conference would display a similar spirit of reciprocity and goodwill.

Mr. FATTAL (Lebanon) said that one could not help but be startled, in looking at the world map, to see how the mare liberum was becoming closed off, compartmentalized and subjected to all sorts of prohibitions. Baudelaire had once compared the infinite expanse of the sea to man's free and infinite spirit, but modern man, weighed down by economic necessity was, like the sea, losing his freedom. The sea, instead of being placed under a régime of organized freedom, was being annexed and carved up. It should have been made the public domain of the world community and collectivized for the benefit of all mankind. That would have constituted real progress towards ensuring the survival of a rapidly growing world population.

His delegation had accepted the principle of a 200-mile economic zone with great reluctance, for such a zone in the Mediterranean would be meaningless. Nevertheless, it had not wanted to oppose the will of the great majority of States, which did not trust an international community controlled by the great maritime Powers.

The proposed definitions of the economic zone, and of the rights of States therein, presented the Committee with a superabundance of confusing variations. Despite long explanations from some representatives, his delegation found the legal nature of the economic zone and the patrimonial sea to be substantially the same. The two notions differed only in the extent of the rights which would be enjoyed under the one and the other.

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(Mr. Fattal, Lebanon)

The term "patrimonial sea" was inappropriate, for the economic zone to which it would refer was not something which the people of a given country had inherited from their forebears. It could be applied much more aptly to the sea as the "common heritage of mankind", a concept which the Conference was supposed to promote but which seemed increasingly doomed to oblivion. The term "economic zone" should also be rejected in scientific research and preservation of the environment, which were not economic activities, were to be reserved to the coastal State in the area in question.

The various formulas which had been submitted were too theoretical. A pragmatic approach would have enabled delegations to view the issues with greater clarity and make more rapid progress.

The jurists at The Hague in 1930 had conceived the idea of the contiguous zone to prevent the territorial sea from being broadened to 12 miles. Now the idea of the economic zone had been put forward to prevent the territorial sea from being broadened to 200 miles. But the contiguous zone had not served its intended purpose and it now appeared that the economic zone, instead of preventing the extension of the territorial sea, would simply replace both it and the contiguous zone. All the proposals which had been submitted contained the assurance that the freedoms of navigation, overflight and the laying of submarine cables and pipelines would not be infringed, but at the same time they provided that coastal States would administer the zone in a sovereign manner and thus subject it to their legislative and regulatory power. If those States exercised in the economic zone police power over security, maritime and air navigation safety, exploration, conservation and exploitation of resources, preservation of the environment and scientific research, what additional powers would they have in the territorial sea and the contiguous zone?

One illusory difference remained between the territorial sea and the economic zone: foreign ships would enjoy the right of innocent passage in the territorial sea and the right of free transit in the economic zone. But "free transit" itself had to be innocent, in that it could not be prejudicial to the interests of the coastal State in the zone. The freedom to lay cables and pipelines too would be limited by coastal-State regulations concerning security and pollution. Only the freedom of overflight, it seemed, would be unimpeded.

(Mr. Fattal, Lebanon)

His delegation therefore thought that the position of the Latin American States which were advocating a 200-mile territorial sea and that of States which were claiming a 200-mile economic zone were very close to one another. The arguments of the former were at least clear-cut and frank, but those of the other were not, since the economic zone would in reality be nothing other than an enlarged territorial sea.

There were two main schools of thought on the economic zone. Most of the Latin American, African and Asian States sought a highly centralized exclusive economic zone from which foreign States and the international community would be excluded, while the socialist and Western States sought a lesser concentration of power in the coastal State and would at least admit the internation community, represented by an international organization. Mutual concessions and sacrifices would have to be made if those two trends were to be reconciled. He wished to suggest a compromise. Perhaps the economic zone could be made more acceptable if it were replaced by the idea of a contiguous fishing zone, such as that conceived of at The Hague in 1930 and established by European States in the 1960s. In a high sea area adjacent to its territorial sea, the coastal State would exercise sovereign rights for the purposes of exploration and exploitation of all types of natural resources, and perhaps also with regard to scientific research and preservation of the marine environment. In these fields it could exercise the control necessary to prevent and punish violations of its laws and regulations, which should be in conformity with certain international standards. The contiguous zone would not extend beyond 200 miles measured from the baseline of the territorial sea. The concept of the continental shelf, for the reasons which he had already set forth, would be eliminated.

That formula would have the advantage of being simple, general, abstract and impersonal, as all well-drafted legislation should be. It would settle the question of sovereignty in a reassuring manner, resolve a difficult problem of terminology, and omit the concept of residual rights.

The proposed compromise should include an obligatory procedure for peaceful settlement of disputes involving the zone and it should give land-locked States a more favourable status than that to which they were relegated in the Geneva Conventions.

Mr. BENCHEIKH (Algeria) said that the economic zone was one of the fundamental elements in the future law of the sea. Algeria had no true interests of its own to

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(Mr. Bencheikh, Algeria)

defend through that concept, since it bordered on a semi-enclosed sea which lacked a continental shelf and was practically devoid of resources. Nevertheless, it understood the struggle of the peoples of most of the developing countries for the establishment and strengthening of the idea of the exclusive economic zone, and it therefore supported the zone without hesitation. By taking that position it felt that it would contribute to strengthening the solidarity of African countries and of third world countries in general, a solidarity which was not an abstract concept but was based on the desire to make the new rules of international law serve the purposes of development. The Organization of African Unity had already demonstrated such solidarity by adopting provisions which recognized the sovereign rights of coastal States and at the same time accommodated the interests of everyone by recognizing, for land-locked and other geographically disadvantaged countries, the right to have access to the economic zone and to benefit from its living resources on the basis of equality among all States of the region. Perhaps the Conference should follow that same path and give greater attention to the legitimate claims of such countries. In his delegation's view, that was the only exception to the exclusive powers of the coastal State in the zone which should be allowed.

His delegation therefore rejected a number of arguments which, although couched in humanitarian language, concealed a dangerous tendency to perpetuate exploitation and domination. Apparently there were delegations which were still waging a last-ditch struggle the effect of which would be to make the rich richer and the poor poorer. There was a close historical analogy between the present struggle over the economic zone and the struggle of peoples who produced raw materials to retain control over them. The economic zone, as a progressive concept and a pillar of the new law of the sea, would help to correct the imbalances brought about by colonialism and imperialism.

The sovereign powers of the coastal States must be greatly expanded so as to include, for example, control of marine pollution and scientific research. Sovereignty was essential to development, and a mere right to regulate would in effect prevent the developing coastal countries from effectively benefiting from the resources of the zone. The economic zone was not an area of the high seas granted to coastal countries through the goodwill of the great Powers. The struggle to make the zone an established concept was a struggle to enable exploited peoples to benefit from marine resources of of which they had always been deprived.

(Mr. Mencheikh, Algeria)

His delegation was aware that in putting the idea of the 200-mile zone into practice certain accommodations would be required, particularly with regard to enclosed and semi-enclosed seas and islands or islets situated in the zone. In that connexion, he said that the proposals submitted by Kenya and Tunisia in document A/CONF.62/C.2/L.28, and by Turkey in document A/CONF.62/C.2/L.34, as also the Romanian proposal, had his delegation's full sympathy, as they set forth ideas which could lead to an equitable solution of the question of enclosed and semi-enclosed seas.

Mr. TEIDINGER (Austria) said the last few years had seen two conflicting tendencies: there had been on the one hand extensions of jurisdiction by a number of coastal States and on the other the emergence of the new juridical notion of "the common heritage of mankind", which had found universal acceptance. It was the task of the Conference to try to harmonize those opposing tendencies.

His country attached particular importance to the principle of the common heritage, which must not, however, be negated by the establishment of vast exclusive zones designed for the sole use of a limited number of States. The legitimate interests of all groups of States should be taken into account in elaborating new legal rules for the seas.

To that end, Austria, together with 23 other land-locked or geographically disadvantaged States had sponsored document A/CONF.62/C.2/L.33, which provided that a coastal State might extend its territorial sea up to a distance of 12 nautical miles. Austria's position had evolved considerably, for at the 1958 Geneva Conference it had still been strongly in favour of maintaining the traditional breadth of the territorial sea at three miles.

His country still had considerable doubts as to the wisdom of establishing an exclusive economic zone of 200 miles, which would detract from what it considered to be the common heritage of mankind. Nevertheless, it realized the need of many coastal States, in particular the developing ones, to secure better utilization of the resources of the seas adjacent to their coasts in order to provide for the livelihood of their peoples and further their economic development, and was therefore prepared to enter into negotiations on that concept. As far as the legal content of the proposed economic zone was concerned. Austria realized the need for the coastal State to exercise certain competences in that zone relating to the exploration and exploitation of its natural

(Mr. Weidinger, Austria)

resources, but it believed that the zone should not become a de facto extension of the territorial sea. There should be a clear legal distinction between the two areas. Austria was therefore in favour of maintaining the legal concept of the contiguous zone, as spelt out in the relevant Geneva Convention, in those cases where a State decided for one reason or another not to extend its territorial sea to 12 miles. The contiguous zone should not, however, be extended beyond 12 miles into the economic zone.

If the concept of economic zones was adopted by the Conference, adequate account would have to be taken of the legitimate interests of the land-locked and other geographically disadvantaged States. He was glad to note that many delegations had already mentioned that necessity. Paragraph 9 of the Declaration of the Organization of African Unity on the Issues of the Law of the Sea would, if accepted, be a very important step towards satisfying the interests and needs of the group of States in question. However, his delegation categorically rejected the attempt in certain proposals relating to the rights of land-locked and other geographically disadvantaged States to make an unjustified distinction regarding the stage of economic development of the States in question. That the distinction was unjustified was evident from the fact that such a differentiation was not made in relation to coastal States. Developed land-locked and other geographically disadvantaged States should enjoy, in relation to their developed coastal neighbours, the same rights as developing land-locked and other geographically disadvantaged States vis-à-vis developing coastal States. It could hardly be the aim of the Conference to exclude a small group of States from adequate participation in the exploration and exploitation of the riches of the seas. His delegation was therefore co-sponsoring document A/CONF.62/C.2/L.39, which set forth very clearly the rights which land-locked and other geographically disadvantaged States should have under the new Convention regarding participation in the exploration and exploitation of the living and non-living resources of the zone of neighbouring coastal States. With respect to non-living resources the proposal expressly provided that equitable arrangements for the exercise of that right should be made by the States concerned. The provisions concerning revenue-sharing made no distinction between coastal and land-locked States: any State that participated in the exploitation of the non-living resources should contribute a fair share of its revenues to the international authority for the ultimate benefit, in particular, of the less developed members of the

(Mr. Weidinger, Austria)

international community. In view of the envisaged extension of the rights of coastal States, land-locked and other geographically disadvantaged States should be entitled to participate equitably in the exploitation of resources of all kinds outside the territorial sea. Such participation, which could to a certain extent offset the disadvantaged geographical situation of those States, should therefore not be regarded as a privilege.

The draft articles co-sponsored by his delegation represented a regional or subregional approach and provided for participation only in the zone of neighbouring coastal States. The expression "neighbouring" should in his delegation's view be defined as referring not only to States adjacent to each other but also to States of the region situated within reasonable proximity to a land-locked or other geographically disadvantaged State. The purpose of his delegation's concept was to provide for co-operation between the coastal States and other less fortunate members of the different regions of the world. Rather than the notion of an exclusive economic zone, his delegation would prefer the concept of an integrated economic zone, benefiting all members of the same geographical region. The past few years had witnessed a trend towards economic co-operation and integration in various parts of the world, which should also cover the seas. A concept based on nationalistic seclusion would be a step backward. His delegation's concept was more in conformity with modern economic policy than was the establishment of a great many exclusively national economic zones, which would be tantamount to balkanization of much of the sea.

His delegation hoped that the coming negotiations would lead to a solution which would give all States, great or small, coastal or land-locked, developed, or developing the right to participate on an equal and non-discriminatory basis in the exploration and exploitation of the resources of an economic zone in their respective regions.

The meeting rose at 1.05 p.m.